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In The

Supreme Court of the United States

October Term, 1994

ELOISE ANDERSON, in her official capacity as Director of the California Department of Social Services and RUSSELL GOULD in his official capacity as Director of the California Department of Finance,

Petitioners,

v.

VERNA EDWARDS, for herself and as Guardian Ad Litem for VERNAIS EDWARDS, PAMELA EDWARDS and ERICKA EDWARDS; BARBARA MOORE, for herself and as Guardian Ad Litem for REBIANA ROBI, DERRAL ROBI, DELISHA JAA, RAYLEISHA TAYLOR; and VANESSA HAMILTON for herself and as Guardian Ad Litem for JONNY WATSON, CLEO THOMAS, RICKY MCDONALD, JIMMY PASHELL, and STANLEY HAMILTON, on behalf of themselves and all others similarly situated,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONERS' REPLY BRIEF ON THE MERITS

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PETITIONERS' REPLY BRIEF ON THE MERITS

SUMMARY OF ARGUMENT

Respondents construct their principal arguments on two fundamental contentions, both of which are seriously flawed.

First, they claim AFDC applicants historically have had virtually unfettered discretion to decide who is in and who is out of the household's AFDC assistance unit.

(Respondents' Brief on the Merits ["Resp. Br."] at 17-18, 40.) From this premise, respondents argue that unless Congress has expressly delegated to the states the power to establish rules for the mandatory inclusion of certain persons in an assistance unit, the states have no such power. In fact, it is the states which have the discretion to decide who is in and who is out of the assistance unit, so long as the states' rules do not offend the will of Congress, expressed in the Social Security Act, or the directives of the Secretary of Health and Human Services, expressed in the federal regulations. Respondents would turn the scheme of cooperative federalism, that is the AFDC program, on its head.

The other fundamental flaw underlying respondents' arguments is that placing siblings and non-siblings living with a single caretaker relative in the same assistance unit violates the availability of income principle and the Secretary's regulations implementing that principle. This is so, say respondents, because *any* income received by *any* member of such an assistance unit who does not have a legal obligation to use that income for the support of all others in the assistance unit, would improperly be presumed available to the others. Respondents ignore, or attempt to diminish the importance of, two explicit directives of Congress.

The first such directive is that all caretaker relatives—whether or not eligible for AFDC on their own behalf—have a strict duty to use the assistance payment for the benefit of all the children the caretaker is responsible for. 42 U.S.C. § 605. Because no child can receive AFDC unless he or she has a designated caretaker, it makes no difference to the caretaker's duty under § 605

whether the aided children for whom the caretaker is responsible are siblings of one another or not.

The second congressional directive respondents ignore is even more basic: Congress has decreed that the states must consider " . . . any other income and resources of any child or relative claiming aid . . . " in determining how much cash aid an AFDC household will receive. 42 U.S.C. § 602(a)(7)(A). This express statutory directive underpins the states' basic discretion to decide assistance unit composition. No federal regulation, even those that prohibit the states from presuming income is "available" to members of the assistance unit under certain circumstances, may be read in such a way as to contravene an explicit congressional directive. By requiring the combining of assistance units headed by the same caretaker relative, California's non-sibling filing unit rule is consistent with, and actually implements, § 602(a)(7)(A) by considering the income and resources of all persons in the household who are claiming aid under the AFDC program.

In accord with the long-standing and clearly stated policy of the federal AFDC agency, California's rule and similar rules in over half the states of the Union fall squarely within each state's discretion to implement its AFDC program within the limitations of that state's fisc. 42 U.S.C. § 601. Such rules so not constitute unapproved benefit proration schemes under 42 U.S.C. § 612, nor, since similarly sized families are treated the same, are they inequitable in light of the purposes and provisions of the Social Security Act.

I

IT IS THE STATES, NOT AFDC APPLICANTS, WHICH HAVE THE DISCRETION UNDER FEDERAL LAW TO DEFINE ASSISTANCE UNITS

Respondents contend that only Congress, and not HHS and certainly not the states, can dictate who must be in an assistance unit, claiming, in essence, that 42 U.S.C. § 602(a)(38) defines both the floor *and* the ceiling of mandatory assistance unit composition. (Resp. Br. 17-18.) Indeed, relying on this Court's discussion in *Bowen v. Gilliard*, 483 U.S. 587 (1987), of Congress's intent in adopting the federal family filing unit rule, respondents assert that AFDC applicants have the "right," restricted only by the express terms of § 602(a)(38), to include or exclude household members from the assistance unit. Respondents have no such "right." Nothing in § 602(a)(38), the implementing federal regulations, or in any of the cases that have construed it—most importantly *Bowen* itself—limits the states' discretion to decide what persons in a household should be included in an AFDC assistance unit.

Within the scheme of "cooperative federalism" that is the AFDC program, *King v. Smith*, 392 U.S. 309, 316 (1968), a state may craft its AFDC plan in any way it chooses so long as it does not offend the express dictates of Congress and the Secretary's implementing regulations, *King* at 317. In deciding whether Congress has limited the states' discretion in the AFDC program, this Court examines the statute to determine if Congress has stated "in direct and unambiguous language," *New York State Department of Social Services v. Dublino*, 413 U.S. 405, 414 (1973), or "with firmness and clarity," *Shea v. Vialpando*, 416 U.S. 251, 266 (1973), its intent to preempt state

regulation in a particular matter. Additionally, a state may not exclude persons from eligibility for AFDC unless congressional authorization for the exclusion is "clearly evidenced from the Social Security Act or its legislative history," even when the Secretary's regulations would allow the states to do so. *Townsend v. Swank*, 404 U.S. 282, 286 (1971).[1]

Neither the Social Security Act nor the implementing regulations define in any comprehensive way how AFDC assistance units may or must be composed. The *only* statutory directive on combining persons applying for AFDC is 42 U.S.C. § 602(a)(38) which was adopted by Congress in 1984 to save federal AFDC dollars—and, of necessity, state AFDC dollars as well. Congress decreed that all minor children and parents, both natural and adoptive, who are living in the home, have to be included in the assistance unit if one of those family members applies for aid. At the time this provision was adopted, there were no congressional requirements for assistance unit composition. *Bowen v. Gilliard*, 483 U.S. 587, 590 (1987); *see Allen v. Hettleman*, 494 F.Supp. 854, 861 (D. Md. 1980). Although the legislative history of this new provision indicates that prior to its enactment families could choose to exclude family members whose presence in the assistance unit (where their income and resources would be considered as available to all members of the unit)

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[1] Respondents' reliance on *Townsend* (Resp. Br., at 15, 32) is misplaced. The non-sibling filing unit rule does not exclude an otherwise eligible person from receiving AFDC, its only purpose is to equalize the grant amount to families of similar size and its only effect is to reduce the per capita amount in recognition of the fact that the recipient lives with other AFDC recipients and a single caretaker relative.

would make the family ineligible for aid or reduce the amount of aid they could receive. These individuals were not excluded from an assistance unit by becoming assistance units unto themselves. Instead the individual with income or resources simply did not apply for AFCE. A family with five children and a caretaker has *never* had the option of telling the state they wanted to be treated as six separate assistance units, regardless of whether the children were siblings of one another. California's rule leaves AFDC claimants who share a household with the same option they have always had: to opt out of the AFDC program completely, within the restrictions of § 602(a)(38).

Section 602(a)(38) prohibits the states from allowing "nuclear" family members to opt out of the assistance unit. It does not otherwise restrict a state's discretion to run its AFDC program and " . . . to furnish financial assistance . . . as far as practicable under the conditions in such state . . . . " 42 U.S.C. § 601. A federal regulation, 45 C.F.R. § 205.40(b)(1), defines "assistance unit" as " . . . [A]ll individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, a[n assistance] payment. . . . " This rule simply codifies the congressional grant of discretion to the states, 42 U.S.C. § 602(a)(7)(A), to determine whose needs should be considered as a unit for the purposes of providing public assistance. No federal regulation either requires or prohibits what California and 28 other states have done in adopting a non-sibling filing unit rule.

Simply put, no federal statute or regulation specifically addresses the precise question raised by this case: whether the states may require that all AFDC-eligible children living with a single relative caretaker—whether

AFDC-eligible or not—be in the same assistance unit. Nonetheless, the federal AFDC agency has long taken the position that the states have just such discretion and now two circuit courts of appeals and two state courts of last resort have agreed. Only the 9th Circuit in this case below and in *Beaton v. Thompson* has reached the contrary, and incorrect, result.

II

NEITHER THE AVAILABILITY PRINCIPLE NOR THE FEDERAL REGULATIONS IMPLEMENTING IT PROHIBIT THE STATES FROM REQUIRING COMBINATION OF ASSISTANCE UNITS HEADED BY A SINGLE CARETAKER RELATIVE

Respondents argue that the history, purpose, and language of the federal regulations that implement the "availability of income" principle require this Court to affirm the 9th Circuit's decision striking down California's non-sibling filing unit rule. (Resp. Br., at 10.) Despite this broad assertion, respondents lose sight of the forest for the trees.

Though considered by this Court in several opinions over the years, the availability principle is not embodied in any congressional directive, but only in regulations of the Secretary of Health and Human Services. Contrary to respondents' arguments and the 9th Circuit's decision below, the Department of Health and Human Services ("HHS"), and its predecessor, the Department of Health, Education, and Welfare ("HEW"), adopted these regulations to address the imputation of income from outside the AFDC assistance unit. *Bray v. Dowling*, 25 F.3d 135, 144 (3d Cir. 1994), pet. for cert. pending.

Prior to *King v. Smith*, HEW adopted a regulation that restricted the resources states must consider under 42 U.S.C. § 602(a)(7) to those "that are, in fact, available to an applicant or recipient for current use on a regular basis . . . . " HEW, Handbook of Public Assistance Administration, pt. IV, § 3131(7). *King* construed Congress's definition of "parent" in 42 U.S.C. § 606(a) as not including a "substitute father," and held that a state could not deny aid to a child because his mother cohabited with a man who was neither the child's father nor married to the child's mother. 392 U.S. at 327. The Court concluded that "parents" were only such persons who had a legal duty to support the child. *Ibid. See Van Lare v. Hurley*, 421 U.S. 338, 345 (1975).

The Secretary codified the holding in *King* by promulgating 45 C.F.R. § 203.1.[2] *Lewis v. Martin*, 397 U.S. 552, 554 (1970); *Van Lare* at 345. In *Lewis*, this Court overturned, as violative of former § 203.1, a California rule that required consideration of the income of a non-adopting stepfather or of an adult male living with the child's mother without benefit of marriage in computing the size of the child's AFDC grant. 397 U.S. at 559-560. California was thus prohibited from "assuming" that a non-adopting stepfather or "MARS" (man assuming the role of spouse) was actually supporting the child. Only if California could demonstrate that non-adopting stepfathers had a legal obligation to support the child under a state law of general applicability, as specified by the federal

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[2] Section 203.1 was later renumbered with minor editorial changes as 45 C.F.R. § 233.90(a)(1), one of the regulations respondents say prohibits California's non-sibling filing unit rule.

regulation, could the state consider their income as available to the child. *Ibid.*

In *Van Lare v. Hurley*, this Court said New York could not reduce an AFDC grant because a nonpaying lodger lived in the household. 421 U.S. at 346. The state's rule improperly "presumed" that a lodger, a person having no legal obligation to support the child, was contributing financially to the household. Only if such a person actually provides support can his or her contribution be considered. To implement *Van Lare*, the Secretary adopted 45 C.F.R. § 233.20(a)(2)(viii), another of the regulations respondents contend prohibit the California rule at issue in this case. 42 Fed. Reg. 6583-4 (1977).

In each of these cases (*King*, *Lewis*, and *Van Lare*), the persons, whose income the state wanted to presume was available to the AFDC recipients in the household, were not applying for AFDC themselves nor were they the designated caretaker of the AFDC-eligible children in the household. The situation addressed by California's nonsibling filing unit rule is not analogous. Here, all the persons, whose income is considered as available to the assistance unit, are themselves applying for aid or they are the designated, but non-needy, caretaker relative.

The named plaintiffs' circumstances illustrate this critical distinction. Verna Edwards does not receive AFDC for herself, but she is the caretaker for her granddaughter and her two grand nieces. (Resp. Br., at 6.) Barbara Moore receives AFDC as the caretaker for her two minor children and two of her grandchildren. (Resp. Br., at 7-8.) Vanessa Hamilton receives AFDC for herself, her two sons, and three of her nephews. (Resp. Br., at 8.)

Respondents argue that California, and the other states which have adopted a rule like California's, cannot require all persons who are applying for aid in such households to be in one assistance unit, because if any of the aided persons receives non-AFDC income, a prohibited deeming of income from that person to other aided persons would occur since the aided person—like the Alabama man-in-the-house in *King*, the California stepfather or MARS in *Lewis*, and the New York lodger in *Van Lare*—is under no legal obligation to support all the other members of the assistance unit. But all this ignores the basic directive of 42 U.S.C. § 602(a)(7), that the state may determine the composition of the assistance unit so that it can take into account *all* income and resources of children and relatives who apply for aid.[3]

Consequently, rather than improperly "presuming" that income received by a member of a household is available to all members of the AFDC assistance unit, California, by requiring the combination of assistance units in the same household where there is only one caretaker relative, is exercising that discretion left to the states by Congress to further define who among the

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[3] California acknowledges the distinction between a caretaker relative who applies for AFDC on her own behalf and one who applies solely on behalf of the needy children in her household. *Drysdale v. Spirito*, 689 F.2d 252, 257-8 (1st Cir. 1982). The addition of "relative" to § 602(a)(7)(A) was a technical change to reflect the fact that relative caretakers could apply for and receive AFDC for themselves as well as for the children in their care. *Ibid.* But *Drysdale* considered only the status of the non-needy caretaker relative, i.e., a caretaker who was not applying for AFDC for herself, vis à vis the earned income disregards; it did not address the treatment of income received by persons "applying for assistance," within the meaning of § 602(a)(7)(A).

persons *claiming aid* in a household must be included in a single assistance unit.[4]

III

CALIFORNIA'S NON-SIBLING FILING UNIT RULE DOES NOT PRORATE AFDC ASSISTANCE AND DOES NOT RESULT IN ANY REDUCTION OF BENEFITS SOLELY BECAUSE OF THE PRESENCE IN THE HOUSEHOLD OF A PERSON WHO IS NOT LEGALLY RESPONSIBLE TO SUPPORT THE ASSISTANCE UNIT

Respondents allege that California's non-sibling filing unit rule violates 42 U.S.C. § 612 and 45 C.F.R. §§ 233.20(a)(2)(viii) and 233.20 (a)(5) by unlawfully prorating AFDC benefits solely because a non-legally responsible individual lives in the household. (Resp. Br. pp. 21, 54-8.) Respondents contend that by enacting 42 U.S.C. § 612, Congress has established a "specific exception to the availability principle that permits states to reduce AFDC grants on savings achieved through scales of economies when recipients live with individuals who have no legal obligation to support them." (Resp. Br., at 55-6.) Although a federally approved proration plan is one way states may recognize economies of scale in their

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[4] This compositional decision necessarily *precedes* the assessment of financial need. *Skidgel v. Maine Dept. of Human Services*, 994 F.2d 930, 937 (1st Cir. 1993), holding "the family filing rule [42 U.S.C. § 602(a)(38)] . . . exists prior to the assessment of need . . . . " Thus, many of the harsh results respondents attribute to the non-sibling filing unit rule actually occur because of the rules for the treatment of income, such as the federal "lump sum" rule, 42 U.S.C. § 602(a)(17), which may render an assistance unit ineligible for a period of months while the unit "spends down" the lump sum.

AFDC grant structure, it is not the only way they may do so.

The states are required to establish standards of need and levels of assistance to recipients. 45 C.F.R. § 233.20(a)(2). Federal law permits the states to provide assistance in the form of a "flat grant" system, provided such a system does not obscure the calculation of the standard of need which must take into account the costs of food, clothing, shelter, utilities, and other similar needs of recipients. 42 U.S.C. § 602(a)(23); *Dandridge v. Williams*, 397 U.S. 471, 482-3 (1970); *Rosselli v. Affleck*, 508 F.2d 1277, 1280 (1st Cir. 1974), citing *Rosado v. Wyman*, 397 U.S. 397, 419 (1970). California has adopted a flat grant system. Cal. Welf. & Inst. Code § 11450 (West 1991).

In order for a state to adopt a proration plan under § 612, the AFDC grants it pays must be composed of identifiable components or allowances to meet different kinds of needs, e.g., New York's grants include a basic allowance for food, clothing, and household items, a home energy allowance, and a shelter and heat allowance. *See Bray v. Dowling*, 25 F.3d at 139. Only the allowances for shelter, utilities, and similar needs may be prorated, in recognition of the savings achieved when AFDC recipients share their residence with others who are not receiving aid. 45 C.F.R. § 233.20(a)(5).

The proration option is not a "specific exception" to the availability principle, but rather, an application of it, because any income or resource provided to the assistance unit by the individual with whom the assistance unit is living must still be actually available to some member of the assistance unit. 45 C.F.R. § 233.20(A)(3)(ii)(D). The non-sibling filing unit rule does not violate § 612 or any other federal proration

provision for the simple fact that the rule does reduce or prorate benefits to an assistance unit.

As respondents acknowledge in their brief (p. 56), section 612 was enacted in response to *Van Lare*. Both § 612 and 45 C.F.R. § 233.90(a)(5) apply to situations, such as that at issue in *Van Lare*, where an assistance unit shares a household with another individual who is himself not claiming aid. This is different from the situation where a needy nephew is cared for by his needy aunt who has needy children of her own. Under California's non-sibling filing unit rule, there would be only one assistance unit residing in such a household. With only one assistance unit in the household, neither § 612 nor 45 C.F.R. § 233.90(a)(5) applies. The assistance unit receives its full allotment of aid depending on the number of people in the unit, and, accordingly, there is no reduction or proration of benefits due to income or resources from outside the assistance unit. Respondents' assertion that the challenged policy constitutes an unauthorized proration plan is without merit.

IV

THE LONG-STANDING POLICY OF THE FEDERAL AFDC AGENCY, THAT THE STATES MAY DEFINE ASSISTANCE UNITS, CONSTRAINED ONLY BY SECTION 602(A)(38), IS ENTITLED TO CONSIDERABLE DEFERENCE

Respondents urge this Court to give no deference to the policy statements of the federal AFDC agency, which declare state rules, like California's non-sibling filing unit

rule, do not violate federal availability of income regulations and constitute a valid exercise of the state's discretionary authority within the AFDC program. (Resp. Br., at 64.) To the contrary, substantial deference is due these policy pronouncements, as the agency's interpretation of its own regulations and the federal statute is consistent and of long-standing duration.

Respondents point out that the HHS pronouncements were not issued in compliance with the Administrative Procedures Act, 5 U.S.C. § 553. However, the APA expressly exempts from the public notice and comment requirements an agency's interpretive policy pronouncements. 5 U.S.C. § 553(b)(3)(A). Similarly, respondents' argument that HHS Action Transmittal 94-6 is entitled to no deference because it was issued in response to litigation should also be rejected. HHS is not a party to the case before the Court, nor is it a party to any of other proceedings in which the validity of a state's non-sibling filing unit rule is at issue. *See*, e.g., *Bray*, 25 F.3d at 143, n. 11.

HHS policy supporting the challenged California rule is long-standing in nature. As discussed by the Solicitor General in his brief, HHS has consistently expressed the view that states have the discretion to adopt a rule consolidating assistance units where there is but one caretaker. (S.G. Br. at 19-25.) Two courts of appeals have found HHS policy in this matter to be correct and entitled to deference. *Bray*, 25 F.3d at 143, *Wilkes*, 32 F.3d at 1329. While HHS may not have expressly stated, prior to AT 94-6, that the challenged policy does not violate the availability regulations, the Agency must be presumed to have been aware of its own regulations, including regulations implementing the availability principle, when it issued

guidance to the states regarding their discretion in matters of assistance unit composition. More significantly, however, the federal agency's pronouncements are entitled to substantial deference because they correctly interpret the applicable federal statutes and regulations.

V

THE NON-SIBLING FILING UNIT RULE DOES NOT CREATE A LEGAL DUTY REQUIRING CARETAKER RELATIVES TO PROVIDE SUPPORT FOR THEIR NEEDY EXTENDED FAMILY MEMBERS

Respondents take issue with that portion of the holding in *Bray v. Dowling*, 25 F.3d 135, which sustained New York's non-sibling filing unit rule, in part, on the basis that 42 U.S.C. § 605 imposes a legal duty on the AFDC caretaker to use the AFDC payments for the benefit of all of the needy children, including the non-siblings, in the assistance unit.[5] (Resp. Br., at 58.) Certainly § 605 does not create any legal duty on the part of a caretaker relative to seek and receive public assistance for her

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[5] In addition to the Second Circuit in *Bray*, the Eighth Circuit in *Wilkes*, 32 F.3d at 1330, the Massachusetts Supreme Judicial Court in *MacInnes*, 593 N.E.2d at 225-6, and the North Carolina Supreme Court in *Morrell*, 449 S.E.2d 175, all relied on the duty of the AFDC caretaker relative to use the grant for the benefit of the aided children in her care.

California acknowledges that the duty imposed by § 605 does not affect any non-AFDC income of either the caretaker or the children in her care, nor does it create in the non-sibling children an obligation to support one another. Nonetheless where the sole support of AFDC-eligible persons in the household is the welfare grant, § 605 is dispositive.

needy, non-sibling relative for whom she cares. Section 605 does, however, require a caretaker relative who applies for and receives AFDC to use those payments for the benefit of all needy individuals for whom the payments are made, the needy non-siblings included.[6] *Bray*, 25 F.3d at 144, citing *Jackson v. O'Bannon*, 633 F.2d 329, 336 (3d Cir. 1980) ("The entire AFDC program relies on the integrity of the parent or custodian who is expected to disburse the child's grant in accordance with the statutory purpose.")

Section 605 also does not create or alter state laws governing the general legal obligation of support. It does not obligate a caretaker relative to assume support for her needy kin or require the caretaker to share non-AFDC income received by any family member, other than her own children.[7] Section 605 does not address, and California does not rely upon it to resolve, questions unrelated

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[6] It would be a violation of the caretaker's duty under § 605 to parcel out the AFDC grant on a per capita basis to the needy children for whom aid is provided, but this is exactly what respondents repeatedly infer caretakers would do if the non-sibling filing unit rule were applied to their households. There is no indication, however, that respondents also believe it would be proper for a mother who has given birth to another child to parcel out to that child only, the incremental increase in benefits she receives when her assistance unit grows larger by one. Families simply do not function this way. *See Dandridge v. Williams*, 397 U.S. at 845.

[7] Section 605 is not the authority by which income of one sibling is attributed to other siblings or half-siblings, or even to the parent. Siblings have no general duty to support one another or their parents. In the AFDC program, however, siblings have to share their income and resources with each other and with their parents. 42 U.S.C. § 602(a)(38). Thus, the deeming of income between persons with no legal duty to support one

to the issue of composition of the assistance unit, such as those regarding availability of income and the deeming of non-AFDC income between members of the assistance unit.

As recognized in *Bray*, *Wilkes*, *MacInnes*, and *Morrell*, however, once the caretaker elects to receive AFDC, she assumes the legal responsibility to utilize the AFDC grant for the benefit of all the needy children she cares for. And, as this Court recognized in *Bowen v. Gilliard*, the assumption that a caretaker relative will use all the net economic resources available to the unit, including non-AFDC monies like child support and income from employment, to support the household, realistically reflects the actual situation that such resources are used to benefit the entire family unit. 483 U.S. at 600, n. 14. Accordingly, families pragmatically consider among, other things, whether it is economically advantageous or not to accept AFDC for the non-sibling relative for whom they elect to provide care given the total economic resources at their disposal. The non-sibling filing unit rule comports with this reality.

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another is not generally prohibited by federal law. *Bowen v. Gilliard*, 483 U.S. at 596-7.

VI

THE NON-SIBLING FILING UNIT RULE IS EQUITABLE IN LIGHT OF THE PURPOSES OF THE AFDC PROGRAM BECAUSE SIMILARLY SIZED HOUSEHOLDS RECEIVE THE SAME AMOUNTS OF AID

The Ninth Circuit in neither *Beaton v. Thompson* nor the case below reached the question whether the state's non-sibling filing unit rule was equitable, but respondents assert the rule's inequity as a ground for affirming the judgment below. While respondents acknowledge that the principal effect of California's non-sibling filing unit rule is that similar amounts of AFDC are provided to similarly sized families, they argue that this kind of equity is not consistent with the language and purposes of the Social Security Act. (Resp. Br. at 74.) Nonetheless, respondents must also acknowledge that the states have the "undisputed right" to set the standard of need and the amount of the AFDC grant. *King*, 392 U.S. at 334; *Jefferson v. Hackney*, 406 U.S. 535, 541, 545 (1972). Thus, if the language and purpose of the Act is not violated when a California household composed of a single mother and her three children receives a monthly AFDC grant of $723, how is there a violation when, under the non-sibling filing unit rule, another California household composed of a mother and her child and the two children of her deceased sister also receive $723 per month? In the absence of California's rule, similarly sized households receive an AFDC windfall of up to $473 more a month, depending upon how many potential assistance units live with a single caretaker relative. (See examples at p. 39 of Pet. Br.)

No system, particularly one that distributes limited state and federal resources to children who are deprived of parental support and in financial need, is perfectly equitable. But unless such a system lacks any rational

basis, it will not be struck down. *Dandridge*, 397 U.S. at 485. The occasional anomaly, such as occurs when a non-needy caretaker with substantial income, who cares for her needy grandchildren, receives a higher per capita amount of AFDC, does not make the rule irrational.[8] Furthermore, by focusing on the per capita amount of benefits rather than on the grant to the assistance unit as a whole, respondents skew the reality that the non-sibling filing unit rule addresses: a caretaker relative will use the total amount of AFDC funds to support all the needy children in the household, e.g., she will not buy two quarts of milk, one for her own children and one for her nieces and nephews who live with her.[9]

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[8] It is somewhat disingenuous for respondents and the amici who support them to continually refer to such non-needy relatives as "wealthy" (*see*, e.g., Resp. Br. at 76) or "affluent" (*see*, e.g., Br. of Amici Curiae Alliance for Children's Rights et al., at 16.) First, it is highly unlikely that truly wealthy relatives would find it necessary or expedient to apply for welfare benefits for such children. Second, it defies common sense to aver that such relatives would segregate their income and resources in such a way as to use only the AFDC monies they receive to meet the children's needs.

[9] Amici curiae who support respondents argue strenuously that California's non-sibling filing unit rule compels caretaker relatives to place their minor relatives in foster care, being quick to point out that the cost to the state of foster care is greater than the cost of providing the non-sibling children with a separate AFDC grant. (AARP Br. at 13-14; Alliance Br. at 15.)

These arguments are blunted considerably by a recent change in federal AFDC policy. Effective March 1994, a needy AFDC caretaker relative who cares for a needy extended family member may receive foster care payments for the care of such child and continue to receive AFDC for herself and her own children. AFDC Action Transmittal 94-5, dated February 28, 1994.

By adopting the non-sibling filing unit rule, California achieves equity among similarly sized needy households. Though it may be an imperfect scheme because non-needy caretakers can receive more per capita benefits when they care for their nieces, nephews, or grandchildren, it is a wholly legitimate choice, and one which this Court should uphold.

CONCLUSION

California urges this Court to reverse the judgment of the Ninth Circuit and, by so doing, affirm the discretion of California, and of every other state in the Union, to decide whether or not to require the combination of assistance units when they have the same caretaker.

Respectfully submitted,

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